

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
UNITED STATES OF AMERICA

v.

XAVIER SIMMS,

Defendant.
-----XORDER2/14/24
22 CR 528 (VB)

Pending before the Court is defendant Xavier Simms's motion for a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10, based on Part A of Amendment 821 to the Sentencing Guidelines. (Doc. #48). Amendment 821 took effect on November 1, 2023, and applies retroactively in this case.

For the reasons set forth below, the motion is GRANTED.

On April 20, 2023, Simms was sentenced principally to 57 months' imprisonment on his guilty plea to firearms trafficking and firearms trafficking conspiracy. The applicable guideline range was 57-71 months' imprisonment, based on a final offense level of 23 and a criminal history category of III. Simms had 4 criminal history points, including 2 "status points" for committing the offense while under probation supervision,

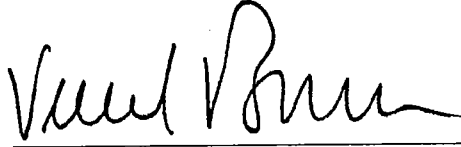
Part A of Amendment 821 amended Guidelines Section 4A1.1 by eliminating the 2 criminal history status points a defendant receives for committing the offense while under a criminal justice sentence, so long as the defendant otherwise has less than 7 criminal history points. As a result, Simms now has 2 criminal history points and is in Criminal History Category II, such that his amended guideline range is 51-63 months. The parties agree Simms is eligible for a sentence reduction pursuant to Amendment 821.

Having considered the sentencing factors set forth in 18 U.S.C. § 3553(a), the Court concludes a reduction of the term of imprisonment to the low end of the amended guideline range is fair and appropriate. Although the offense was extremely serious, the mitigating factors that warranted a sentence at the low end of the original guideline range, including defendant's youth at the time of the offense, his difficult upbringing, his history of substance abuse, his untreated mental health problems, his several other health problems, and the strong support of his family, still apply. Moreover, a sentence of 51 months' imprisonment is adequate to deter Simms from engaging in future criminal conduct, and deterrence is the most important sentencing factor here. In addition, during the period of his incarceration, defendant has not incurred any serious disciplinary infractions and has successfully participated in an education program. Finally, any public safety concerns posed by defendant's early release are adequately mitigated by the fact that he will be closely supervised by the Probation Department for three years.

Accordingly, defendant Xavier Simms is resentenced to 51 months' imprisonment. All other components of the sentence remain as originally imposed on April 20, 2023.

Dated: February 14, 2024
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read "Vincent Briccetti", written over a horizontal line.

Vincent L. Briccetti
United States District Judge